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Oceans and the law of the sea

Oceans and the law of the sea

Report of the Secretary-General

Addendum

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I. Introduction

1. The importance of the oceans and seas for the earth's ecosystem and for providing the vital resources for food security and for sustaining economic prosperity and the well-being of present and future generations is reiterated by the General Assembly in its annual resolutions on "Oceans and the law of the sea" (see in particular General Assembly resolution 55/7).

2. In 1999, in its resolution 54/33 of 24 November 1999, the General Assembly, convinced of the importance of the annual consideration and review of ocean affairs and the law of the sea by the Assembly as the global institution having the competence to undertake such a review, established an open-ended informal consultative process in order to facilitate its annual review, in an effective and constructive manner, of developments in ocean affairs by considering the Secretary-General's report on oceans and the law of the sea. In the same resolution, the General Assembly requested the Secretary-General to make the report available at least six weeks in advance of the meeting of the Consultative Process. Accordingly, the Secretary-General's report on oceans and the law of the sea for the fifty-sixth session of the General Assembly was submitted to the second meeting of the Consultative Process, held from 7 to 11 May 2001 (A/56/58).

3. In the dynamic field of ocean affairs and the law of the sea, developments occur on a continuing basis. In that context, views were expressed during the deliberations on the agenda item entitled "Oceans and the law of the sea" at the fifty-fifth session of the General Assembly in 2000 that the Assembly, when it considers the item in the fourth quarter of the year, would benefit from a supplementary report which would cover the significant developments that had occurred after the preparation of the main annual report in the first quarter of the year, submitted to the meeting of the Consultative Process in May.

4. The present report has thus been prepared as an addendum to the main report to the General Assembly at its fifty-sixth session (A/56/58) and should be read in conjunction with the latter, as well as with the report on the work of the Consultative Process at its second meeting (A/56/121). The attention of the General Assembly is drawn to another report, entitled "Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks" (A/56/357), submitted to the General Assembly at the current session pursuant to General Assembly resolution 54/32 of 24 November 1999. All of the four above-mentioned reports are available to the General Assembly when it considers the item on "Oceans and the law of the sea" at the fifty-sixth session.

II. The United Nations Convention on the Law of the Sea and its implementing Agreements

A. Status of the Convention and its implementing Agreements

5. Since the report of the Secretary-General (A/56/58) was issued, two further States have deposited their instruments of ratification of UNCLOS: Bangladesh and Madagascar. Thus, as at 30 September 2001, the total number of States parties, including one international organization, stood at 137.

6. Bangladesh and Madagascar also expressed their consent to be bound by the Agreement relating to the implementation of Part XI of UNCLOS of 28 July 1994. In addition, Costa Rica acceded to the Agreement in September 2001 and the number of parties to that Agreement has thus risen to 103.

7. As for the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks 1995 (the Fish Stocks Agreement), instruments of ratification/accession have been deposited by New Zealand and Costa Rica since the issuance of the main annual report for the current session. The number of States parties to the Agreement currently stands at 29, so that only one more instrument is needed for the entry into force of the Agreement.

8. The entry into force of the Agreement in the near future would necessarily create a new situation with a number of implications, especially in respect of the exercise of rights of States parties and the fulfilment of their obligations, including the fulfilment of the

enhanced duties of flag States regarding fishing vessels flying their flag on the high seas. The issues that would gain in significance include, inter alia, the establishment and implementation of conservation and management measures through existing or new, as appropriate, subregional or regional fisheries management organizations or arrangements, including the application of the precautionary approach, ecosystem-based management and ensuring compatibility of measures; the collection and provision of information and cooperation in scientific research; compliance and enforcement, including the implementation of cooperation schemes at the subregional and regional levels; and recognition of special requirements of developing States and cooperation with such States, including through the establishment of special funds to assist them in the implementation of the Agreement. (See also A/56/357 in this connection.)

B. Declarations and statements under articles 310 and 287 of UNCLOS

9. Since the issuance of the main annual report, two additional States have made declarations. On 31 May 2001, Tunisia accepted, in its declaration under article 287 and in order of preference, the International Tribunal for the Law of the Sea and an arbitral tribunal established in accordance with Annex VII to UNCLOS as the means for the settlement of disputes relating to the interpretation or implementation of the Convention.

10. Bangladesh declared upon ratification of the Convention that, inter alia, it understood that the provisions of the Convention did not authorize other States to carry out in the exclusive economic zone and on the continental shelf military exercises, or manoeuvres, in particular those involving the use of weapons or explosives, without the consent of the coastal State. Bangladesh also declared that it was not bound by any domestic legislation or by any declaration issued by other States upon signature or ratification of the Convention and reserved its right to state its position concerning all such legislation or declarations at the appropriate time. In particular, Bangladesh stated that its ratification of the Convention in no way constituted recognition of the maritime claims of any other State which had signed or ratified the Convention where such claims were inconsistent with the relevant principles of international law and were prejudicial to the sovereign rights and jurisdiction of Bangladesh in its maritime areas.

11. Bangladesh reserved its right to adopt legislation regarding the exercise of the right of innocent passage of warships through its territorial sea and expressed the view that a notification was needed in respect of nuclear-powered ships or ships carrying nuclear or other inherently dangerous or noxious substances, stating that no such ships should be allowed within Bangladesh waters without the necessary authorization.

12. Other parts of Bangladesh's declaration related to the responsibility and liability in respect of damage caused by pollution of the marine environment by certain vessels or aircraft, objects of an archaeological and historical nature found within the maritime areas over which Bangladesh exercises sovereignty or jurisdiction which shall not be removed without its prior notification and consent, and matters relating to the settlement of disputes and harmonization of national legislation with the provisions of the Convention.[1]

13. In its resolution 55/7, the General Assembly once again called upon States to ensure that any declarations or statements that they had made or would make when signing, ratifying or acceding to UNCLOS were in conformity therewith and, otherwise, to withdraw any of their declarations or statements that were not in conformity (see also A/56/58, para. 23). No action by States parties in this connection has been reported.

14. Since the issuance of the main annual report, no additional States have made a declaration or statement pursuant to article 43 of the 1995 Fish Stocks Agreement.

C. Meeting of States Parties (Eleventh Meeting)

15. The Eleventh Meeting of States Parties to UNCLOS was held in New York from 14 to 18 May 2001. Ambassador Cristián Maquieira (Chile) was elected President of the Eleventh Meeting by acclamation. The representatives of Australia, India and Nigeria were elected as Vice-Presidents.

16. The Meeting of States Parties, inter alia, dealt with the budget of the International Tribunal for the Law of the Sea for 2002, the financial regulations of

the Tribunal, matters related to the continental shelf and matters related to article 319 of the Convention. The Meeting also elected Mr. Xu Guangjian (China) to serve the remainder of the term of Judge Lihai Zhao, who passed away on 10 October 2000.

17. *Budget of the Tribunal for 2002.* The budget of the Tribunal, totalling $7,807,500, was approved by the Eleventh Meeting of States Parties for the financial year 2002. This included a recurrent expenditure of $6,522,400, a non-recurrent expenditure of $340,800 essentially for the acquisition of furniture, equipment and special equipment, and $894,300 as a contingency fund to provide the necessary financial means to consider cases in 2002.

18. *Financial regulations.* The Secretariat, in consultation with the Registry, prepared a working paper on the financial regulations of the Tribunal (SPLOS/WP.14), taking into account the various proposals and the outcome of the discussions during the Ninth and Tenth Meetings. Progress was made in the Working Group chaired by the President regarding some of the pending issues. Tentative agreement was reached on most of the outstanding provisions in regulations 1 to 5. The proposals made in reference to the establishment of a Finance Committee were withdrawn in view of the decision taken by the Meeting regarding the establishment of an open-ended working group on financial and budgetary matters (see SPLOS/73, paras. 49-50).

19. *Matters relating to the continental shelf.* In support of the concerns raised by developing States regarding the difficulty of complying with the time limit laid down in article 4 of Annex II to the Convention, and in the light of the discussions and of proposals and amendments put forward by delegations, the Meeting of States Parties adopted a decision based on the draft prepared by an open-ended Working Group (see SPLOS/72). The decision provided that, for a State for which the Convention entered into force before 13 May 1999, the date of commencement of the 10-year time period for making submissions to the Commission on the Limits of the Continental Shelf is 13 May 1999. There was general agreement, however, that States that were in a position to do so should make every effort to make a submission within the time period established by the Convention. (See also paras. 40-43 below in this connection.)

20. *Matters related to article 319 of UNCLOS.* Divergent views were still held by delegations; some expressed their support for an expanded role for the Meeting of States Parties beyond budgetary and administrative matters while others maintained that the role of the Meeting of States Parties should not go beyond that laid down in the Convention (see A/56/58, paras. 30-33), according to which the General Assembly has the oversight role to review the overall implementation of the Convention. In that regard, the Assembly had established the Consultative Process in order to facilitate its annual review of developments in ocean affairs.

21. Some other delegations, while supporting an expanded role for the Meeting of States Parties, were of the view that the modalities of such a role should be defined and this should include legal issues regarding the implementation of the Convention.

22. In view of the divergent views still held by delegations, the Meeting decided to retain on the agenda for its next meeting the item entitled "Matters related to article 319 of the United Nations Convention on the Law of the Sea".

23. *Other matters.* The Twelfth Meeting of States Parties to UNCLOS will be held in New York from 13 to 24 May 2002.

III. Maritime space

A. Recent developments

24. At the second meeting of the Consultative Process, the European Union noted the collection of information by the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs regarding legislative measures undertaken by States parties in implementing UNCLOS and welcomed the Secretary-General's idea that an analysis of the information received should appear in his next annual report, as part of an overall assessment of the implementation of UNCLOS 20 years after its adoption (see A/56/121, part B, para. 17). Although the Secretariat intends to send a note verbale requesting information concerning steps undertaken by States to harmonize their national legislation with UNCLOS as well as relevant texts of their legislative acts, as appropriate, the Secretary-General would also appreciate it if States wishing to contribute to this

effort would communicate to the Division such information at their earliest convenience. The Division disseminates such information, especially regarding national legislation and delimitation treaties, through, inter alia, its web site, www.un.org/Depts/los.

25. Several developments relating to State practice have been brought to the attention of the Division. One of the notable developments was the adoption, in March 2001, of the comprehensive Maritime Code of Slovenia, which entered into force on 12 May 2001. Also in March 2001, Norway adopted "Regulations relating to foreign marine scientific research in Norway's internal waters, territorial sea and economic zone and on the continental shelf", which have been in force since 1 July 2001. The Regulations relating to the limits of the Norwegian territorial sea around Svalbard adopted in June 2001 entered into force on the same day (see also para. 50 below).

26. Concerning the deposit by Pakistan in June 1999 of the list of geographical coordinates of points for the drawing of straight baselines (see A/54/429, para. 90), India stated that, in its view, certain baseline points of Pakistan were inconsistent with international law and the relevant provisions of UNCLOS. India noted, inter alia, that Pakistan had employed straight baselines along its entire coastline, notwithstanding the fact that the Pakistani coastline was quite smooth and was rarely deeply indented or fringed by islands, and that the appropriate baseline for Pakistan's entire coast should be the normal baseline. India further objected against the use of certain basepoints and declared that it did not recognize the arbitrary method of drawing straight baselines and that any claim Pakistan would make on the basis of the above notification to extend its sovereignty or jurisdiction on Indian waters or to extend its internal waters, territorial sea, exclusive economic zone and continental shelf would be rejected by India (see *Law of the Sea Bulletin* No. 46).

27. Regarding the delimitation of maritime boundaries, France and the Seychelles, on 19 February 2001, concluded an agreement on the delimitation of the maritime boundary of the exclusive economic zone and the continental shelf of France (around the territory of Île Glorieuse and Île du Lys) and of Seychelles (Assumption and Astove Islands).

28. On 9 January 2001, Peru issued a statement concerning the 18°21'00" parallel, which had been referred to by the Government of Chile as the maritime boundary between Chile and Peru in the charts that Chile had deposited with the Secretary-General on 21 September 2000. Peru stated that Peru and Chile had not concluded a specific maritime delimitation treaty pursuant to the relevant rules of international law and that Peru did not recognize the parallel as the maritime boundary between the two States (see Law of the Sea Information Circular No. 13).

29. The Division continues to publish all newly obtained legislation and delimitation treaties in the *Law of the Sea Bulletin*, which appears three times per year.

B. Continental shelf beyond 200 nautical miles and the work of the Commission on the Limits of the Continental Shelf

30. *Commission on the Limits of the Continental Shelf.* The ninth session of the Commission was held in New York from 21 to 25 May 2001. At the session, the Commission followed up on decisions on training that had been approved at previous sessions. In addition, a discussion took place regarding the decision taken by the Eleventh Meeting of States Parties on the date of commencement of the 10-year period for making submissions to the Commission as well as other matters of relevance discussed by the Meeting. The issues of confidentiality in the work of the Commission were also extensively discussed (CLCS/29).

31. The Editorial Committee of the Commission prepared a document entitled Internal procedure of the subcommission of the Commission on the Limits of the Continental Shelf, which was subsequently adopted by the Commission (CLCS/L.12). During the discussion on the document several issues were raised which the Chairman of the Editorial Committee felt might eventually require amendments to the Modus Operandi of the Commission.

32. On the issue of training, the Commission requested the Secretariat to prepare a "Training manual on the preparation of a submission to the Commission on the Limits of the Continental Shelf" to facilitate the preparation of submission by States concerned, especially developing States (see CLCS/29, para. 15).

33. Following positive comments by the President of the Meeting regarding the benefits of a relationship between the Commission and the Meeting of States

Parties, the Commission decided to seek observer status at the next Meeting.

34. The Commission decided not to hold its tenth session in August-September of 2001, but rather to convene the session in 2002 for three weeks' duration beginning with the week of 15 April, should there be a submission. If no submission was received, the session might be reduced to one week, or cancelled altogether, depending on the workload of the Commission. In view of the forthcoming election of 21 members of the Commission at the next Meeting of States Parties in May 2002, the Commission proposed that the eleventh session of the Commission in its new composition should be held from 24 to 28 June 2002.

35. *Establishment of voluntary trust funds.* The General Assembly resolution 55/7 requested the Secretary-General to establish two trust funds, related respectively to the establishment of an extended continental shelf in accordance with the provisions of article 76 of the Convention, and to the work of the Commission.

36. The first trust fund, established pursuant to paragraph 18 of the resolution, is to provide assistance to States parties to meet their obligations under article 76 and annex II to the Convention, and to provide training to countries, in particular the least developed among them and small island developing States, for preparing submissions to the Commission with respect to the outer limits of the continental shelf beyond 200 nautical miles. Norway has donated $1 million to the trust fund and has also transferred to this trust fund the undisbursed portion ($9,220) of its contribution to the Voluntary Fund for Supporting Developing Countries Participating in the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which is now closed.

37. The uses to which the new trust fund are to be put are spelled out in very detailed terms of reference, which are contained in annex II to resolution 55/7. Applications for financial assistance from the fund may be submitted by any developing State, in particular the least developed countries and small island developing States, that is a Member of the United Nations and a party to the Convention. The intended recipients of moneys from the fund are first and foremost coastal States wishing to prepare a submission to the Commission on the Limits of the Continental Shelf. The stated purpose of the fund is to provide, in accordance with the terms and conditions specified in the Financial Regulations and Rules of the United Nations: (a) training to the appropriate technical and administrative staff of the coastal State in question, in order to enable them to perform initial desktop studies and project planning, or at least to take full part in these activities; (b) funds for such studies and planning activities, including funds for advisory/consultancy assistance if needed.

38. This trust fund is not intended to be used to finance activities conducted by an international organization; however, reimbursements may be requested from the fund for airfare and per diem (presumably based on United Nations rates) for the participants from developing countries. Developing States interested in having their experts participate in any appropriate training course as trainees are asked to address their applications to the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations. All applications will be considered by the Division with the assistance of an independent panel of experts who will examine them on the basis of section 4 of the terms of reference (resolution 55/7, annex II) and recommend the amount of financial assistance to be given. The Division will be guided solely by the financial needs of the requesting developing State and the availability of funds, with priority given to least developed countries and small island developing States, taking into account the imminence of pending deadlines. The Secretary-General will provide financial assistance from the fund on the basis of the evaluation and recommendations of the Division. Payments will be made against receipts evidencing actual expenditures for approved costs.

39. The second trust fund, referred to in paragraph 20 of resolution 55/7, was created to enable members of the Commission from developing countries to participate fully in the work of the Commission. Thus far, no contribution has been received for this trust fund, nor was there any request for assistance from the fund.

40. *Ten-year time limit for submissions to the Commission.* At the Tenth Meeting of States Parties, several States pointed out that certain countries, particularly developing countries, might have difficulties in complying with the 10-year time limit from the entry into force of the Convention for the countries in question to make the submission to the Commission regarding the outer limits of the

continental shelf beyond 200 miles. The time limit was viewed as especially onerous for a large number of developing States in view of their limited technical expertise and lack of financial means. General support was expressed regarding the difficulty of complying with the 10-year time limit and the matter was placed on the agenda of the eleventh meeting.

41. At the Eleventh Meeting of States Parties (14-18 May 2001), an item entitled "Issues with respect to article 4 of Annex II to the United Nations Convention on the Law of the Sea" was discussed. At the request of the Tenth Meeting, the Secretariat had prepared a background paper for that discussion (SPLOS/64). Among other important considerations, in the background paper it was pointed out that, according to the provisions of the Convention, for 14 of the 30 States originally identified in 1978 as appearing to meet the legal and geographic requirements to take advantage of the provisions of article 76 regarding an extended continental shelf (12 of the 14 States being developing States), the deadline for submission of the outer limits would fall in November 2004. In the background paper the Secretariat also identified a number of possibilities for dealing with the issue of the 10-year time limit.

42. In addition to the background paper prepared by the Secretariat, the Meeting also had before it notes verbales from the Government of the Seychelles regarding the extension of the time period for submissions to the Commission (SPLOS/66) and a position paper (SPLOS/67) on the time frame for submissions put forward by all States members of the Pacific Island Forum which are also States parties to the Convention.

43. The Meeting adopted a decision (SPLOS/72) whereby in the case of a State party for which the Convention had entered into force before 13 May 1999, it was understood that the 10-year time period referred to in article 4 of Annex II to the Convention shall be taken to have commenced on 13 May 1999, and that the general issue of the ability of States, particularly developing States, to fulfil the requirements of article 4 of Annex II to the Convention would be kept under review (see also para. 19 above in this connection). It should be noted that 13 May 1999 was the date of the adoption of the Scientific and Technical Guidelines (CLCS/11 and Add.1) by the Commission; the Guidelines are intended, inter alia, to provide assistance to coastal States regarding the technical nature and scope of the data and information which they are expected to submit to the Commission according to the provisions of article 76 of UNCLOS.

44. *Workshops and symposia (2001-2002).* The General Assembly in its resolution 55/7 encouraged concerned coastal States and relevant international organizations and institutions to consider developing and making available training courses on the delineation of the outer limits of the continental shelf beyond 200 nautical miles and for the preparation of submissions to be presented to the Commission.

45. At its eighth session, which was held from 31 August to 4 September 2000, the Commission concentrated primarily on the issue of training in order to assist States in further developing the knowledge and skills necessary to prepare a submission in respect of the outer limits of the continental shelf provided for by the Convention. Although it is not part of its mandate to conduct or organize training, the Commission decided to design an outline for a five-day training course for the delineation of the outer limits of the continental shelf beyond 200 nautical miles and for the preparation of a submission of a coastal State to the Commission (CLCS/24). The Commission undertook this work with a view to facilitating the preparation of submissions, especially by developing States, in accordance with the letter and spirit of the Convention, as well as with the Guidelines of the Commission; it was also felt that the use of the outline would ensure a uniform and consistent practice among the courses. Several regional training courses were conducted in 2001 and are scheduled for 2002 using this outline as the basis for the core curriculum. The practice of offering regional courses appears to be cost-effective for developing countries in the same region and allows the courses to take into account the wide variation in types of continental margins in different areas of the oceans.

46. In this context, a five-day training course was conducted jointly by the Southampton Oceanography Centre and the Hydrographic Office of the United Kingdom of Great Britain and Northern Ireland from 26 to 30 March 2001. The course emphasized both the delineation of the outer limits of the extended continental shelf and the practical aspects of completing a submission to the Commission, and represented a modification of the core outline for a five-day training course designed by the Commission. A similar course is being contemplated for 2002.

47. A regional course which was also a modified form of the Commission's training outline was given by the External Affairs Ministry of the Government of India in New Delhi from 3 to 7 September 2001. The course focused on the application of article 76 and the Statement of Understanding regarding the Bay of Bengal (see Final Act of the Third United Nations Conference on the Law of the Sea, annex II).

48. A Symposium on Marine Geophysics is scheduled to be held during the forthcoming International Congress of the Brazilian Geophysical Society, to be held from 28 October to 1 November 2001 in Salvador de Bahia, Brazil. The papers to be presented, inter alia, will deal with subjects related to the delineation of the continental shelf.

49. In addition, the Government of Brazil, as a result of the experience acquired in preparing its submission, has decided to develop and make available for interested coastal States a five-day regional training course, again based on the outline prepared by the Commission. The course will be held in Rio de Janeiro from 3 to 9 March 2002, under the sponsorship of the Brazilian Interministerial Commission on Sea Resources (CIRM), with the support of the Directorate of Hydrography and Navigation (the Brazilian Hydrographic Office) and Petrobras (the Brazilian State Oil Company), and with the assistance of the Division.

C. Deposit of charts and/or lists of geographical coordinates and compliance with the obligation of due publicity

50. Information concerning the obligation of coastal States parties to deposit charts and/or lists of geographical coordinates of points (specifying the geodetic datum), regarding the baselines as well as the outer limits of various maritime zones, is contained in the main annual report for the current session (A/56/58, paras. 83-90). On 7 June 2001, Norway deposited with the Secretary-General, in accordance with article 16, paragraph 2, of the Convention, a list of geographical coordinates of points for drawing the baselines for measuring the breadth of the territorial sea around Svalbard, as contained in the Regulations of 1 June 2001 relating to the limit of the Norwegian territorial sea around Svalbard.

IV. Shipping and navigation

51. During the period under review, the following main developments affecting the shipping industry and navigation can be highlighted.

A. Safety of ships

1. Ship construction, equipment and seaworthiness

52. The IMO Marine Environment Protection Committee (MEPC) at its forty-sixth session (23-27 April 2001) adopted amendments to regulation 13G of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) to phase out single-hull oil tankers (see para. 87 below).

53. New amendments to the 1994 International Code of Safety for High-Speed Craft (HSC Code) were adopted by the IMO Maritime Safety Committee (MSC) at its seventy-fourth session (30 May-8 June 2001) in order to bring the provisions in line with the relevant provisions of the 2000 HSC Code, which will enter into force on 1 July 2002 for ships built after that date. The amendments relate in particular to the carriage of voyage data recorders and automatic identification systems (AIS).[2]

2. Training of crew

54. An extraordinary session of MSC has been scheduled for two days in November 2001 for the evaluation of information on a number of parties to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) so that they might be placed on the list of confirmed STCW parties before 1 February 2002, the deadline by which all seafarers must have been trained in compliance with the 1995 amendments to STCW and carry certificates to that effect.

3. Labour conditions

55. The International Commission on Shipping, in its enquiry into ship safety published in March 2000, concluded that "for thousands of today's international seafarers life at sea is modern slavery and their workplace is a slave ship". The Commission made a number of recommendations for action, mainly on crew issues and port State control activities, directed at flag

States, coastal States, shippers' councils, classification societies, the Government of the United States of America, the European Commission, the International Maritime Organization (IMO), the International Labour Organization (ILO), the Food and Agriculture Organization of the United Nations (FAO), the International Group of P&I Clubs, international shipping organizations and owners.[3]

56. The problems faced by seafarers, in particular the growing threat of pirate attacks, abandonment and the erosion of traditional seafarers' rights, were also highlighted at the Eleventh Meeting of States Parties to the United Nations Convention on the Law of the Sea (see SPLOS/73, paras. 97 and 98). In that connection, the Joint IMO/ILO Ad Hoc Expert Working Group regarding Claims for Death, Personal Injury and Abandonment of Seafarers, at its most recent meeting (30 April-4 May 2001), approved a draft resolution and guidelines on provision of financial security in case of abandonment of seafarers and a draft resolution and guidelines on shipowners' responsibilities in respect of contractual claims for personal injury or death of seafarers. These texts have been submitted by the Working Group for approval by the IMO Legal Committee and submission to the IMO Assembly for adoption.[4]

B. Safety of navigation

57. The IMO Subcommittee on the Safety of Navigation (NAV) at its forty-seventh session in July 2001 approved a number of new ship routeing measures and amendments to existing measures for submission to MSC at its seventy-fifth session in 2002 for adoption, among them the establishment of a precautionary area of 10 nautical miles around a floating production storage and offloading vessel (FPSO) located on the Grand Banks of Newfoundland in Canada. Initially an area to be avoided had been proposed instead of the precautionary area, but some delegations felt that such establishment restricted the freedom of navigation in contravention of UNCLOS, while others expressed concern regarding the excessive radius.[5] In this regard, it should be noted that UNCLOS provides that safety zones around artificial islands, installations and structures in the exclusive economic zone and on the continental shelf shall not exceed 500 metres in distance around them (see articles 60 and 80).

58. IMO, as the implementing agency of the project entitled "GEF/World Bank/IMO Development of a Regional Marine Electronic Highway (MEH) in the East Asian Seas", commenced the first phase of the project in March 2001 in the Straits of Malacca and Singapore for a duration of one year, at the end of which an action plan for implementing the regional MEH and a project brief for implementing the first phase of the regional project is to be developed. The MEH is intended to be a regional network of electronic navigational charts to enhance navigational safety and environmental management.[6]

C. Marine casualties

59. *Places of refuge*. IMO has decided to address, as a matter of priority, the issue of places of refuge, from the operational safety point of view, and will prepare guidelines on: (a) actions the master of a ship should take when in need of a place of refuge (including actions on board and actions required in seeking assistance from other ships in the vicinity, salvage operators, flag States and coastal States); (b) the evaluation of risks associated with the provision of places of refuge and relevant operations in both a general and a case-by-case basis; and (c) actions expected of coastal States for the identification, designation and provision of such suitable places together with any relevant facilities.[7] The Legal Committee is to consider any matters relating to international law, jurisdiction, rights of coastal States, liability, insurance, bonds, etc.[8]

D. Flag State implementation

60. The IMO Assembly at its twenty-second session in November 2001 will consider for adoption a number of draft resolutions aimed at strengthening flag State implementation, including, inter alia, those dealing with self-assessment of flag State performance, and revised guidelines on the implementation of the International Safety Management (ISM) Code by Administrations.[9]

61. As regards measures to strengthen flag State implementation in the area of fisheries, MSC at its seventy-fourth session noted the outcome of the discussions of the Subcommittee on Flag State Implementation (FSI) on illegal, unreported and unregulated (IUU) fishing and recognized that,

although measures relating to fisheries management were outside the competence of IMO, there were many safety and environmental protection issues relating to IUU fishing which were within the purview of IMO, and the consideration of those issues would assist FAO. MSC also noted that IMO could cooperate with FAO to develop a port State control regime of its own through sharing of experience and expertise on the matter and that, in the context of the seventh session of the Commission on Sustainable Development, there was a need to establish principles against which the transfer of ships might be considered, as FSI had recognized that the transfer of ships was also a problem in relation to illegal fishing activities.

V. Crimes at sea

62. Criminal activities at sea can range from acts of piracy and armed robbery to smuggling of migrants and illicit traffic in drugs or firearms, and often are the work of organized criminals. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, which was adopted by the General Assembly on 31 May 2001,[10] is the most recent global instrument aimed at strengthening cooperation among States in preventing, combating and eradicating transnational organized crime.

A. Piracy and armed robbery against ships

63. The number of incidents of piracy and armed robbery against ships continued to rise dramatically in the period under review and remains a cause of great concern to the shipping community and affected States, especially coastal States.

64. In recognition of the need to strengthen international cooperation and coordination in combating piracy and armed robbery at sea, the Consultative Process chose this issue as one of two areas of focus of its discussions at the second meeting, in May 2000. The outcome of the discussions and the suggested issues and elements with regard to the prevention of and response to incidents of piracy and armed robbery, which have been proposed to the General Assembly, are contained in the report of the Consultative Process at its second meeting (see A/56/121).

65. The IMO secretariat made an oral report to the Maritime Safety Committee (MSC) at its seventy-fourth session (30 May-8 June 2001) on the outcome of the discussions at the Consultative Process. The Committee requested the secretariat to submit the full report to its seventy-fifth session in 2002.

66. MSC at its seventy-fourth session expressed deep concern at the continuous upward trend in the number of incidents of piracy and armed robbery and once again invited all Governments (of flag, port and coastal States) and the industry to intensify their efforts to eradicate these acts. It endorsed the outcome of the IMO evaluation and assessment missions to Jakarta and Singapore in March 2001.[11] It agreed that there should be a more precise distinction between the reporting of actual and of attempted attacks. The industry was urged to ensure that all incidents are reported to flag/coastal States. Flag States were urged to use the agreed format for reporting attacks and coastal States were urged to report on follow-up action taken when informed of such attacks and to put in place national legislation for dealing with incidents of piracy and armed robbery. The Committee also approved a draft resolution on the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships and a draft resolution on measures to prevent the registration of "phantom" ships for submission to the IMO Assembly at its twenty-second session (19-30 November 2001) for adoption.[12]

B. Smuggling of migrants

67. The number of people being smuggled by sea continues to increase. France, Greece and Italy informed IMO that they had detected around 3,375 illegal migrants being transported by sea between April 1999 and April 2001.[13] Spain, in its submission to IMO, reported that it had detected around 17,035 illegal migrants in waters under its sovereignty or jurisdiction during 2000 and that those figures did not even include the unknown number of migrants who could not be detected or detained by the authorities, including those who might have lost their lives.[14]

68. The increase in the smuggling of migrants by sea has been accompanied by an increase in the complexity of ways to deal with the problem. The recent rescue by

the Norwegian vessel *Tampa* of more than 400 illegal migrants from a sinking Indonesian ferry and the refusal by Australia to permit them to disembark at Christmas Island demonstrate the potential for tensions between the rendering of humanitarian assistance and national sovereignty considerations. It is to be hoped that the *Tampa* case will not be viewed by shipmasters as a deterrent to rendering assistance to people in distress at sea, which is not only an obligation under article 98 of UNCLOS but also an enshrined tradition and principle of maritime law.

69. MSC at its seventy-fourth session revised the Interim Measures for Combating Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea contained in document MSC/Circ.896 on the basis of a proposal submitted jointly by France, Greece, Italy and the United Kingdom.[15] The revised text, inter alia, specifies that the carriage of more than 12 persons on board a cargo ship constitutes an automatic infringement of the International Convention for the Safety of Life at Sea (SOLAS).

C. Illicit traffic in narcotic drugs and psychotropic substances

70. The Commission on Narcotic Drugs in its resolution 44/6, entitled "Enhancing multilateral cooperation in combating illicit traffic by sea", adopted at its forty-fourth session in March 2001, considered the report of the informal open-ended working group on maritime cooperation against illicit trafficking by sea which met in December 2000 (see A/56/58, paras. 240-241). It requested the United Nations International Drug Control Programme (UNDCP) to, inter alia, develop a user-friendly reference training guide to assist parties making requests for verification of nationality and for consent to board, search and take appropriate action under article 17 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and to assist competent authorities who have the responsibility to receive and respond to such requests.[16]

VI. Marine resources, the marine environment and sustainable development

A. Conservation and management of marine living resources

1. Marine fisheries

71. A Conference on Responsible Fisheries in the Marine Ecosystems organized jointly by FAO and the Government of Iceland, is to be held in Reykjavik from 1 to 4 October 2001. The objectives of the Conference are to gather and review the best available knowledge on marine ecosystem issues and identify means by which ecosystem considerations can be included in fisheries management. The Conference will also identify future challenges and strategies in ecosystem-based fisheries management.

2. Conservation and management of marine mammals

72. The fifty-third annual meeting of the International Whaling Commission (IWC) was held in London from 23 to 27 July 2001 to consider recurrent issues pertaining to the conservation and management of marine mammals, such as the renewal of the zero catch limits for commercial whaling; continuation of the work on the Revised Management Procedure for commercial whaling, including specification of an inspection and observer system; catch limits for aboriginal subsistence whaling; status of whales; scientific permits issued by Japan for the taking of whales in the western North Pacific; whale killing methods; and environmental research, including the IWC Scientific Committee's plan to hold a workshop on interactions between fisheries and cetaceans.[17]

73. At the July meeting, members of the Commission defeated two proposals, one by Australia and New Zealand and the other by Brazil, to establish whaling sanctuaries in the South Pacific and in the South Atlantic respectively. The Commission also denied a request by Iceland to become a member of IWC with a reservation on the 1982 commercial whaling moratorium.[18]

B. Non-living marine resources

International Seabed Authority[19]

74. Following the adoption by the Assembly of the International Seabed Authority in July 2000 of the Regulations for Prospecting and Exploration for Polymetallic Nodules in the Area (ISBA/6/A/18), the Authority since 29 March 2001, has signed 15-year contracts for exploration with six of the seven registered pioneer investors, namely, Institut français de recherche pour l'exploitation de la mer (IFREMER)/Association française pour l'étude et la recherche des nodules polymétalliques (AFERNOD) (France), Deep Ocean Resources Development Co. Ltd. (DORD) (Japan), Yuzhmorgeologiya (Russian Federation), China Ocean Mineral Resources Research and Development Association (COMRA) (China), Interoceanmetal Joint Organization (IOM) (Bulgaria, Cuba, Czech Republic, Poland, Russian Federation and Slovakia) and the Government of the Republic of Korea. The contract between the Authority and the Government of India had not yet been signed at the time of the preparation of the present report.

75. The seventh session of the International Seabed Authority was held at Kingston, Jamaica, from 2 to 13 July 2001. A major item for the consideration of the Council of the Authority was the regulations and procedures for prospecting and exploration for polymetallic sulphides and cobalt-rich crusts in the international seabed area (see also A/54/429, para. 341). The Council held extensive discussions, on issues outlined in a paper prepared by the secretariat (ISBA/7/C/2), and decided to continue its consideration of the item at its next session. The Council also decided to request the secretariat of the Authority to collect and assemble the necessary information to facilitate further discussion in the Council on important considerations raised in the secretariat paper and to assist the Legal and Technical Commission in its work on the matter.

76. In accordance with regulation 38 of the Regulations for Prospecting and Exploration for Polymetallic Nodules in the area, the Legal and Technical Commission of the Authority had adopted and issued its recommendations for the guidance of contractors for the assessment of possible environmental impacts arising from exploration for polymetallic nodules in the Area (ISBA/7/LTC/1/Rev.1 and Corr.1). The Council took note of the recommendations and decided that further consideration should be given to them at its next session, as necessary.

77. During the session, the Council elected 24 members of the Legal and Technical Commission (ISBA/7/C/6) and the Assembly elected 15 members of the Finance Committee (ISBA/7/A/7, para. 5). The Assembly also approved the Staff Regulations of the Authority (ISBA/7/A/5).

78. Immediately preceding the session, a workshop to standardize the environmental data and information required by the Regulations and the recommendations of the Legal and Technical Commission for the guidance of contractors was convened by the Authority at its headquarters in Kingston from 25 to 29 June 2001. The workshop highlighted the fact that the environmental effects of seabed exploration are hard to predict, given the lack of experience in this area and the relative paucity of information about the deep ocean. It concentrated on identifying key types of data needed to assess the state of the deep ocean environment as a prerequisite to determining the effect of future mineral resource development on the environment and thereafter determining ways to shape such development so as to cause the least possible harm to the environment. The workshop's output included specific recommendations as to what should be collected and measured (in relation to benthic biology, chemical and geological factors as well as the water column) and even, in many cases, what methods and procedures should be employed to ensure comparability of data and information.

C. Protection and preservation of the marine environment

1. Reduction and control of pollution

(a) Land-based activities: the Global Programme of Action[20]

79. The Global Programme of Action (GPA) Coordination Office, under the United Nations Environment Programme (UNEP), at The Hague, will sponsor the First GPA Intergovernmental Review Meeting, hosted by the Government of Canada, from 26 to 31 November 2001 in Montreal. The Meeting is expected to bring together senior representatives from over 100 Governments, a large number of international

organizations, global and regional non-governmental organizations, the private sector and other GPA stakeholders, which are the partners involved in both the current and future implementation of the GPA.

80. The main themes to be discussed during the meeting are: binding and non-binding agreements at the national and regional levels; voluntary agreements and involvement of the private sector; capacity-building; innovative financing and use of economic instruments; and sharing experiences through reporting and the further development of the clearing-house mechanism.

81. One of the major tasks of the meeting is to increase awareness at all levels, especially at the national level, of the importance of addressing land-based activities as the major source of marine and coastal degradation. The meeting will also endeavour to highlight the lack of funding as a major impediment to dealing with land-based problems and will seek to increase private sector involvement. Other objectives of the meeting include developing a long-term work plan for a framework for a new long-term vision and preparing and adopting a high-level declaration to constitute the GPA input to the World Summit on Sustainable Development in Johannesburg in 2002. Further details on the First GPA Intergovernmental Review Meeting may be obtained by consulting the GPA web site at www.gpa.unep.org/igr.

(b) Pollution by dumping; waste management

Disposal of wastes at sea

82. The Scientific Group of the Consultative Meeting of Contracting Parties to the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention) at its 24th meeting in May 2001 completed its work on the eight waste-specific guidelines for the assessment of wastes or other matter that may be considered for dumping.[21] It decided to refer the specific Guidelines for Assessment of Vessels to the Marine Environment Protection Committee (MEPC) for its consideration in view of the relationship between the discussions on recycling of ships and the recommendations in the Guidelines on the evaluation of alternatives to the disposal of vessels at sea and on the preparation of a decommissioned vessel in case disposal at sea is chosen.[22]

83. Australia, Japan, Norway and the United States informed the meeting of the Scientific Group that they were planning a joint research project involving the release of 15,000 gallons of liquid CO_2 at a depth of more than 800 metres to assess the feasibility of disposal of CO_2 at sea and that additional information on the project would be provided at future meetings.[23]

Management of radioactive wastes

84. The Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management, which was adopted by the International Atomic Energy Agency (IAEA) in 1997, entered into force on 18 June 2001. The Convention is the first international instrument to address the safety of the management and storage of radioactive wastes and spent fuel in countries with or without nuclear programmes. One of its main objectives is to ensure that during all stages of spent fuel and radioactive waste management there are effective defences against potential hazards. The Convention contains requirements related to the transboundary movement of spent fuel and radioactive waste which are based on the 1990 IAEA Code of Practice on the International Transboundary Movement of Radioactive Waste. The State of origin must ensure that it obtains the prior notification and consent of the State of destination. The Convention provides that "transboundary movement through States of transit shall be subject to those international obligations which are relevant to the particular modes of transport utilized" (article 27, para. 1 (ii)).

85. The Convention establishes a mechanism whereby each Contracting Party is obliged to submit for review by meetings of Contracting Parties a report on the measures taken to implement each of the obligations under the Convention. This includes reporting on national inventories of radioactive wastes and spent fuel.

(c) Pollution from vessels

86. The following major developments during the period under review in the regulation of pollution from ships can be highlighted: (a) adoption of amendments to regulation 13G of MARPOL 73/78 to phase out single-hull oil tankers; (b) adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage; and (c) IMO Conference to consider and

adopt the draft Convention on the Control of Harmful Anti-Fouling Systems.

Adoption of amendments to regulation 13G of MARPOL 73/78 to phase out single-hull oil tankers

87. The IMO Marine Environment Protection Committee at its forty-sixth session in March 2001 amended regulation 13G of annex I to the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto (MARPOL 73/78) in order to expedite the phase-out of most single-hull oil tankers by 2015 or earlier (resolution MEPC.95(46) of 27 April 2001). According to revised regulation 13G, the phase-out period will depend on the category of oil tankers. The continued operation of oil tankers beyond 2015 or beyond the twenty-fifth anniversary of their delivery is only permitted for high-quality ships which had been subjected to a Condition Assessment Scheme (CAS).[24] However, any port State can deny entry to its ports or offshore terminals, to single-hull tankers, that are allowed to operate up until the twenty-fifth anniversary of their delivery.

Adoption of the International Convention on Civil Liability for Bunker Oil Pollution Damage

88. With the adoption of the Bunkers Convention on 23 March 2001, the last significant gap in the international regime for compensating victims of oil spills from ships has been closed. The Convention establishes a liability and compensation regime for damage caused by spills of oil when carried as fuel in ships' bunkers "in the territory, including the territorial sea of a State Party, and in the exclusive economic zone of a State Party, established in accordance with international law or, if a State Party has not established such a zone, in an area beyond and adjacent to the territorial sea of that State determined by that State in accordance with international law and extending not more than 200 nautical miles from the baselines from which the breadth of the territorial sea is measured".[25] Modelled on the International Convention on Civil Liability for Oil Pollution Damage, a key requirement in the new Bunkers Convention is for the registered owner of a vessel to maintain compulsory insurance coverage.

IMO Conference to consider and adopt the draft Convention on the Control of Harmful Anti-Fouling Systems

89. MEPC at its 46th session made further progress in resolving some of the outstanding issues in the draft Convention on the Control of Harmful Anti-Fouling Systems prior to its consideration and scheduled adoption at a conference in October 2001. The principal points for consideration by the conference will be the entry into force provisions, the removal of existing organotin tributyltin (TBT) paints versus overcoating with sealer paints, the proposed damage clause, the provisions on amendments, and other issues which might be raised before or during the Conference.[26]

2. Regional cooperation

Review of UNEP regional seas programme and action plans

Convention for the North-east Pacific

90. The third high-level Government-designated expert meeting of the proposed North-east Pacific regional seas programme, which was held in Panama from 6 to 9 August 2001, approved the text of the draft Convention on Cooperation for the Protection and Sustainable Development of the Marine and Coastal Zones of the North-east Pacific as well as a plan of action and the programme of work for 2001-2006 of this new regional seas programme. It is expected that the plenipotentiaries of the eight coastal States of the region which participated in the negotiations (Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Mexico, Nicaragua and Panama) will meet during the first trimester of 2002 to sign the Convention.[27]

91. The Convention establishes the framework of operation of the plan of action. The programme of work for 2001-2006 also addresses the implementation of the GPA in the North-east Pacific. The Convention for the North-east Pacific is the first regional seas convention negotiated since the adoption of the GPA in 1995 that has integrated the implementation of the GPA within its framework.

D. Protection of specific marine areas

Marine protected areas

92. As part of the preparations for the in-depth consideration by the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) at its eighth meeting in 2002 of the topic of protected areas and to assist in the implementation of the programme of work on marine and coastal protected areas,[28] the secretariat of the Convention on Biological Diversity is convening a Technical Expert Group Meeting on Marine and Coastal Protected Areas, in Leigh, New Zealand, from 22 to 26 October 2001. According to its terms of reference,[29] the Expert Group will, inter alia, focus on marine and coastal protected areas or similarly managed areas and their value for and effects on the sustainable use of marine and coastal living resources.

93. One of the conclusions reached at an expert workshop on the scientific requirements and legal aspects of marine protected areas on the high seas, organized by the German Federal Agency for Nature Conservation at Vilm from 27 February to 4 March 2001, was that UNCLOS provides the framework for all action to conserve biodiversity and other components of the marine environment of the high seas and that it was the bedrock on which all actions had to be based. The workshop suggested that an important subject for discussion within the Consultative Process in the very near future should be the management of risks to biodiversity and other components of the marine environment of the high seas.[30] In that connection, at the second meeting of the Consultative Process, in May 2001, one delegation proposed that the concept of marine protected areas should be applied to waters beyond the limits of national jurisdiction.[31]

Special areas under MARPOL 73/78 and particularly sensitive sea areas

94. New revised guidelines for the designation of special areas under MARPOL 73/78 and guidelines for the identification and designation of particularly sensitive sea areas (PSSAs) were approved by MEPC at its forty-sixth session in April 2001 and are scheduled to be adopted in the form of an IMO Assembly resolution at the twenty-second session in November 2001.[32] They will update and replace the 1991 IMO Guidelines, as amended in 1999 (IMO Assembly resolutions A.720(17) and A.885(21)).

95. At its forty-sixth session, MEPC also approved in principle the designation of the marine area around the Florida Keys of the United States and the Malpelo Islands off Colombia as PSSAs, subject to a review by the Subcommittee on Navigation of the proposed navigational measures. Such measures were approved by NAV at its forty-seventh session in July 2001 and its decision will be conveyed to MEPC at its next session in 2002.[33]

E. Climate change and sea level rise

96. Following its suspension after the November 2000 session at The Hague, at which negotiators had failed to reach agreement, the sixth Conference of the Parties to the United Nations Framework Convention on Climate Change resumed deliberations in Bonn, Germany, from 16 to 27 July 2001. A political agreement was reached in Bonn on some fundamental issues which, according to the Executive Secretary of the Conference, succeeded in enabling the ratification of the Kyoto Protocol.[34]

97. Agreement was reached on issues and concepts that are integral to the implementation of the Kyoto Protocol once it enters into force, including those concerning funding, reduction mechanisms, emissions trading, clean development, joint implementation, carbon sinks and compliance. The Agreement will be adopted formally at the seventh Conference of Parties, to be hosted by the Government of Morocco in Marrakech from 29 October to 9 November 2001. Several decisions still requiring some additional work are expected to be finalized at the seventh Conference of Parties and adopted together as a package with the decisions reached in Bonn.

F. Ten-year review of the implementation of Agenda 21[35]

98. The Commission on Sustainable Development, acting as the preparatory committee for the World Summit on Sustainable Development, convened its tenth session from 30 April to 2 May 2001, to begin preparations for the Summit, to be held in Johannesburg, South Africa, in 2002. The 2002 Summit will assess the degree of progress made thus far in translating into practice the principles of sustainable development and the measures referred to in Agenda

21, agreed upon 10 years ago in Rio de Janeiro, at the United Nations Conference on Environment and Development. The three-day session was the first in a series of preparatory sessions of the Commission and was essentially an organizational session. The Commission, inter alia, considered the progress in preparatory activities at the local, national, subregional, regional and global levels as well as by major groups; focused on a process for setting the agenda and determining possible main themes for the Summit; and recommended to the General Assembly the adoption of the provisional rules of procedure of the Summit. A multi-stakeholder panel was also held during the session to allow representatives of major groups to bring their views to the organizational discussion.[36]

99. The Commission agreed on the timetable of regional and global preparatory meetings at which the details of the agenda for the Summit would be developed. Regional preparatory meetings, to be supported by national and subregional meetings, will be held from August to November 2001 and preparatory meetings at the global level will be held from January to June 2002.

100. The second and third preparatory sessions of the Commission are scheduled to be held in New York from 28 January to 8 February and from 25 March to 5 April 2002, respectively. The fourth and final preparatory session is scheduled to be held at the ministerial level in Indonesia from 27 May to 7 June 2002.

101. A number of regional round tables of eminent persons were also held from June to August 2001 to ensure that a wide range of views was brought into the preparatory process. Further details on the ongoing preparations for the Summit may be found at www.johannesburgsummit.org.

VII. Underwater cultural heritage

102. The fourth meeting of governmental experts on the draft convention on the protection of the underwater cultural heritage was held at UNESCO headquarters from 26 March to 6 April and from 2 to 7 July 2001. A text for submission to the UNESCO General Conference at its thirty-first session, to be held in Paris from 15 October to 3 November 2001, was adopted by 49 votes in favour and 4 against, with eight abstentions. Among the sensitive issues were the protection of the underwater cultural heritage on the continental shelf and the inclusion of provisions concerning State vessels and aircraft. The text of the draft convention was recommended by the Director-General of UNESCO, the chairman of the fourth meeting and the co-chairmen of the Drafting Committee to the General Conference for adoption.

VIII. Marine science and technology

103. As recommended by the General Assembly in its resolution 55/7, one of the areas of focus of the second meeting of the Consultative Process was "marine science and development and transfer of marine technology as mutually agreed, including capacity-building". There were extensive discussions (see A/56/121, part B, paras. 18-19, 21, 23-24, 27-67) and the Consultative Process suggested a number of issues and a number of elements relating to each issue for consideration by the General Assembly (see A/56/121, part A, paras. 3-51). Delegations emphasized the fundamental importance of implementing the provisions of Parts XIII and XIV of UNCLOS on marine scientific research and development and transfer of marine technology, respectively, with the aim of making these important parts of the Convention operational in practical terms, as well as the marine science and technology provisions of chapter 17 of Agenda 21.

Intergovernmental Oceanographic Commission Advisory Body of Experts on the Law of the Sea (ABE-LOS)

104. The Intergovernmental Oceanographic Commission (IOC) of UNESCO is recognized in UNCLOS as the competent international organization for matters related to marine scientific research (MSR). The Advisory Body of Experts on the Law of the Sea (ABE-LOS) was established by IOC in its resolution XIX-19 with specific terms of reference whereby, upon request, it would give advice to the Assembly, the Executive Council and/or the Executive Secretary of IOC with regard to the possible role of the Commission in the implementation of UNCLOS. ABE-LOS held its first meeting in Paris on 11-13 June 2001 (ABE-LOS I). The meeting was attended by 29 member States and five representatives of institutions, including the Division, as observers. In

this connection, attention is drawn to the low level of participation and States are encouraged to increase their participation in the upcoming meetings of ABE-LOS. The June meeting focused on two main topics on its agenda: "Matters pertaining to Part XIII of UNCLOS" and "Matters pertaining to Part XIV of UNCLOS".

105. *Matters pertaining to Part XIII of UNCLOS.* ABE-LOS I concentrated its discussions mainly on three articles of Part XIII under which the role of IOC could be further developed. During the consideration of UNCLOS article 251 on the establishment of general criteria and guidelines to assist States in ascertaining the nature and implications of marine scientific research, some members of ABE-LOS pointed out the linkages between that article and article 246, paragraph 5 (a), on the "consent regime" for MSR, while others were of the view that article 251 should be viewed in conjunction with articles 248 and 249 on, respectively, the duty to provide information and to comply with certain conditions when carrying out MSR.

106. There were further discussions on article 246 and the "consent regime". States were encouraged to identify "a central MSR office" (or any equivalent body) at the national level, to facilitate the processing of applications for consent and for ensuring uniformity in the application and interpretation of the relevant provisions of UNCLOS.

107. ABE-LOS I also held discussions on UNCLOS article 247 dealing with MSR projects undertaken by or under the auspices of international organizations. It was stated that the article offered the benefit of a simplified procedure for consent for carrying out MSR projects when undertaken by or under the auspices of an international organization in the exclusive economic zone or on the continental shelf of one or more countries. In that regard, it was recognized that IOC had a major role to play in identifying specific rules and procedures to be followed to fully implement article 247. Preliminary work had been done on the issue, as reflected in document IOC/INF-1055, which nevertheless needed extensive revision.

108. *Matters pertaining to Part XIV of UNCLOS.* In view of the leading role of IOC in promoting the establishment of generally accepted guidelines, criteria and standards for the transfer of marine technology (UNCLOS article 271), Part XIV was considered a priority issue for implementation. In that connection, ABE-LOS I discussed the possible role of IOC as a clearing-house mechanism, based upon existing models (e.g., the GPA clearing house), with the purpose of meeting the needs of suppliers and recipients of marine technology. One component of such a mechanism would be an integrated database on the transfer of marine technology, which would at the same time accommodate the need for capacity-building.

109. It was recalled that the issue of a clearing house had been raised at the meeting of the IOC Inter-sessional Intergovernmental Working Group in Lisbon, on 29 and 30 March 2001. The Working Group had instructed the IOC Executive Secretary to initiate the development of a clearing-house mechanism for ocean sciences for facilitating access by member States to: relevant information derived from ongoing research; a list of global ocean science programmes and projects; opportunities for capacity-building in ocean science; and a list of sources of information on ocean science.

110. During the discussion at ABE-LOS I, it was recognized that document IOC/INF-1054, entitled "Draft IOC principles on transfer of marine technology", would constitute a good starting point for establishing accepted guidelines, criteria and standards for the transfer of marine technology and should be redrafted in close cooperation with the Division.

111. ABE-LOS I also discussed the question of the establishment and functions of regional marine scientific and technological research centres as envisaged in UNCLOS (articles 276 and 277). It was suggested that, through existing regional IOC mechanisms, regional bodies should be strengthened to carry out the functions spelled out in UNCLOS. The IOC subsidiary bodies could serve as effective platforms for the identification of needs and the implementation of marine science and technological transfers.

112. At the conclusion of the consideration of the topics on its agenda, ABE-LOS I adopted three recommendations, which were submitted to the IOC Assembly at its twenty-first session for adoption.

113. *Recommendations adopted by ABE-LOS I.* The first two recommendations on Part XIV and Part XIII of UNCLOS, respectively, established two open-ended subgroups to work by correspondence, in close cooperation with the Division. The first subgroup would work on redrafting document IOC/INF-1054, taking into account the debate on the issues in ABE-

LOS I. The second subgroup would assist IOC in establishing appropriate internal procedures related to the effective and appropriate use of UNCLOS article 247 on marine scientific research undertaken by or under the auspices of international organizations. The third recommendation concerned the continuation and completion of the collection and analysis of information from member States on their MSR practices, in close cooperation with the Division.

Twenty-first session of the IOC Assembly

114. The IOC Assembly at its twenty-first session (Paris, 3-13 July 2001) adopted resolution XXI-2, entitled "IOC and UNCLOS", and its annex, entitled "First Meeting of the Advisory Body of Experts on the Law of the Sea (ABE-LOS I): Recommendations". In the resolution, the IOC Assembly noted with satisfaction the progress made by ABE-LOS I and instructed the Executive Secretary of IOC to take the necessary actions for the full implementation of the ABE-LOS I recommendations.

115. The IOC Assembly also adopted resolution XXI-11 on "African priorities", in which the IOC Executive Secretary was requested to assist African member States, without prejudice to the competence of the United Nations Commission on the Limits of the Continental Shelf, in developing their capacity within the context of UNCLOS article 76.

Workshop organized by the South Pacific Geoscience Commission (SOPAC)[37]

116. Fifty-five participants representing coastal and researching States attended a three-day Regional Workshop on the Issues and Challenges of Marine Scientific Research in the Pacific Region, held at Port Moresby in February 2001 (see also A/56/58, paras. 470-472). Four key areas were discussed extensively, with recommendations proposed for each: relating to the legal framework for conduct of marine scientific research; capacity-building; transfer of marine science and technology, including data; and marine mineral exploration and marine scientific research as parallel activities.

117. SOPAC highlighted that, for Pacific States, UNCLOS provisions concerning obligations with regard to MSR incumbent upon the researching State in relation to participation and (post-cruise) data and information requirements remained a priority issue which demanded continued emphasis and attention.

IX. Settlement of disputes

118. During the period under review, the International Tribunal for the Law of the Sea was seized of the following cases: the "Grand Prince" case (Belize v. France; and the "Chaisiri Reefer 2" case (Panama v. Yemen). (Further details on these cases may be found at the web site of the Division for Ocean Affairs and the Law of the Sea: www.un.org/Depts/los.)

119. *Trust fund.* Pursuant to paragraphs 9 and annex I to General Assembly resolution 55/7, the Secretary-General established a trust fund for the purposes of assisting States in the settlement of disputes through the International Tribunal for the Law of the Sea. The United Kingdom made two contributions to the trust fund, amounting to $24,865. To date, no formal request was received by the Secretariat for assistance from the trust fund.

A. Cases before the International Tribunal for the Law of the Sea

120. *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-eastern Pacific Ocean (Chile v. European Community)* (see also A/56/58, paras. 442-446). In February 2001, Chile and the European Union (EU) reached an agreement by which they settled their dispute with regard to both access for EU fishing vessels to Chilean ports and bilateral and multilateral scientific and technical cooperation on the conservation of swordfish stocks. In view of the agreement, EU requested a suspension of panel proceedings within the World Trade Organization and Chile suspended proceedings before the Tribunal. However, each party reserved its right to revive the proceedings before the Tribunal at any time. By an Order of 15 March 2001, at the request of the parties, the President of the special chamber of the Tribunal formed to deal with the case extended the time limit for making preliminary objections. Accordingly, the time limit of 90 days for making preliminary objections would commence from 1 January 2004 and each party would have the right to request that the said time limit should begin to apply from any date prior to 1 January 2004.

121. *The "Grand Prince" Case (Belize v. France).* On 26 December 2000, the fishing trawler *Grand Prince*, flying the flag of Belize, was arrested by French authorities in the exclusive economic zone of the Kerguelen Islands in the French Southern and Antarctic Territories for allegedly engaging in illegal fishing. The court of first instance at Saint-Paul, Réunion, confirmed the seizure of the vessel, catch and equipment on board by an order of 12 January 2001. The court also fixed a bond for the release of the vessel in the amount of 11.4 million French francs. On 23 January 2001, the criminal court at Saint-Denis, Réunion, ordered the confiscation of the vessel. On 21 March 2001, an Application was made to the Tribunal on behalf of Belize against France for the prompt release of the vessel in accordance with article 292 of UNCLOS. On 20 April 2001, the Tribunal found that it did not have jurisdiction under article 292, paragraph 2, of UNCLOS to hear the Application as there was not sufficient basis for holding that Belize was the flag State of the vessel. Therefore, the Tribunal was not called upon to deal with the remaining questions of jurisdiction, admissibility and merits of the Application.

122. *The "Chaisiri Reefer 2" Case (Panama v. Yemen).* In accordance with article 292 of UNCLOS, proceedings were instituted on 3 July 2001 before the Tribunal by an Application made on behalf of Panama against Yemen for the prompt release of the vessel *Chaisiri Reefer 2*, its crew and cargo, which had been detained by Yemeni authorities. However, by a note verbale dated 12 July 2001, the Embassy of Yemen in Germany, on behalf of its Government, informed the Tribunal that the vessel, its cargo and crew had been released and were free to sail from Mukalla Port, Yemen. In addition, the Government of Yemen guaranteed that the same load that had been unloaded previously from the vessel would be loaded back and that the case would therefore be withdrawn by Panama. Accordingly, the Agent of Panama informed the Tribunal that the parties had agreed to discontinue the proceedings as a result of having settled their dispute on the arrest of the vessel. Consequently, by an Order dated 13 July 2001, the President of the Tribunal recorded the discontinuance of the proceedings and directed the removal of the case from the Tribunal's List of Cases.

B. Arbitration and conciliation

123. The following names have been added to the list of arbitrators in accordance with article 2, of Annex VII to UNCLOS: Prof. Dr. Hasjim Djalal, Dr. Etty Roesmaryati Agoes, Dr. Sudirman Saad, and Lieutenant Commander Kresno Bruntoro, nominated by Indonesia; and Mr. Walter Sá Leitão, nominated by Brazil.

124. The following names have been added to the list of conciliators in accordance with article 2, of Annex V to UNCLOS: Prof. Dr. Hasjim Djalal, Dr. Etty Roesmaryati Agoes, Dr. Sudirman Saad, and Lieutenant Commander Kresno Bruntoro, nominated by Indonesia; and Mr. Walter Sá Leitão, nominated by Brazil.

125. The full list of arbitrators and conciliators is available on the Division's web site at www.un.org/Depts/los. The list is also available in the Law of the Sea Information Circular published by the Division.

126. The list of special arbitrators under Annex VIII to UNCLOS is available on the web sites of the respective specialized agencies which have responsibility in the different fields concerned. The list has been drawn up in accordance with article 2 of Annex VIII to the Convention.

X. International cooperation and coordination

A. Subcommittee on Oceans and Coastal Areas of the Administrative Committee on Coordination

127. The Subcommittee on Oceans and Coastal Areas (SOCA) of the Administrative Committee on Coordination (ACC) held its eleventh session at United Nations Headquarters in New York on 3 and 4 May 2001. The session was hosted by the United Nations Development Programme (UNDP).

128. In considering the ongoing review of ACC machinery and its implications for SOCA, the Subcommittee welcomed the conclusions and approaches advocated by the newly established ACC High-level Committee on Programmes at its first session and noted that "international coordination and

cooperation is of vital importance in addressing all aspects of oceans and coastal areas. The cooperation between the relevant parts of the United Nations Secretariat for the purpose of ensuring better coordination of United Nations work on oceans and seas is thus considered imperative. The existence of a mechanism such as ACC/SOCA is needed." The Subcommittee went on to express "its conviction [that the most productive course of future action lay in] building on existing mechanisms through innovative and more integrated approaches for effective coordination and cooperation".

129. The Subcommittee, inter alia, also reviewed the status of the preparation, under its auspices with FAO as the lead agency, of the United Nations Atlas of the Oceans; its role in the implementation of the GPA; and the preparations for the World Summit on Sustainable Development.

130. In addition, the Subcommittee discussed matters relating to progress in the independent evaluation of the Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) (see also paras. 132-133 below); and future directions for the IAEA Marine Environmental Studies Laboratory.

131. In regard to UNEP Governing Council decision 21/13 concerning a feasibility study for establishing a regular process for the assessment of the state of the marine environment, the Subcommittee, inter alia, expressed its willingness to participate in the consultative process for the study and stressed the need for the participation of Governments in the process (see also para. 134).

B. Other mechanisms

Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP)

132. At its thirty-first session, hosted by the United Nations through the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, at Headquarters in New York from 13 to 17 August 2001, GESAMP considered the final report of the independent evaluation team that it had established at its thirtieth session to recommend ways to make GESAMP more effective, more inclusive and more responsive to emerging problems and to the needs of policy makers and decision makers. Progress in this exercise, among other GESAMP matters, was reported by the chairperson of GESAMP and by its IMO Administrative Secretary to the Consultative Process at its second meeting in May 2001.

133. At the session, following considerable discussion, GESAMP responded positively and constructively to the evaluation team's recommendations, some of which contained substantial financial implications. Follow-up actions have been undertaken and will be reported on to the Consultative Process at its third meeting scheduled for May 2002.

134. GESAMP also addressed a UNEP Governing Council decision regarding a feasibility study for establishing a regular process for the assessment of the state of the marine environment (decision 21/13). That initiative warranted substantial attention by GESAMP in view of its own current and established role and competence in preparing global assessments of the state of the marine environment and of the need to define its role and position vis-à-vis the envisaged feasibility study. An informal consultative meeting to discuss the UNEP Governing Council decision was convened in Reykjavik from 12 to 14 September 2001, jointly hosted by the Ministry of Environment of Iceland and UNEP. The report of the meeting is forthcoming. However, there appeared to be a consensus that the goal of a regular assessment of the state of the marine environment would best be served not by the establishment of new structures or institutions but rather by the adaptation of existing mechanisms, structures and programmes and the optimization of cooperation and coordination among them.

XI. Review by the General Assembly of developments in ocean affairs: United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs

135. The General Assembly, by its resolution 54/33 of 24 November 1999, decided to establish an open-ended informal consultative process in order to facilitate, in

an effective and constructive manner, its own review of overall developments in ocean affairs.

136. Consistent with the legal framework provided by UNCLOS and the goals of chapter 17 of Agenda 21, the Consultative Process discusses the annual report of the Secretary-General on oceans and the law of the sea and suggests particular issues to be considered by the General Assembly, with an emphasis on identifying areas where coordination and cooperation at the intergovernmental and inter-agency levels should be enhanced.

137. The second meeting of the Consultative Process was held at United Nations Headquarters from 7 to 11 May 2001. Pursuant to paragraph 3 (e) of General Assembly resolution 54/33 and after consultations with Member States, the President of the General Assembly reappointed Ambassador Tuiloma Neroni Slade (Samoa) and Mr. Alan Simcock (United Kingdom) as Co-Chairpersons of the second meeting of the Consultative Process.

138. In the light of the results of informal consultations held by the Co-Chairpersons preceding the second meeting (three rounds of informal consultations were held, on 23 February, 23 March and 4 May 2001 respectively) and the comments from some delegations, Co-Chairperson Simcock proposed that the second meeting should adopt its format and annotated agenda (A/AC.259/L.2) with a number of amendments. The second meeting adopted by consensus the format and the annotated agenda, as amended (A/AC.259/5). In accordance with one of those amendments, the Consultative Process would henceforth be referred to as the "United Nations Open-ended Informal Consultative Process established by the General Assembly in its resolution 54/33 in order to facilitate the annual review by the Assembly of developments in ocean affairs". Some delegations would have wished to stress further the link between the Consultative Process and item 41 of the provisional agenda of the fifty-sixth session of the General Assembly entitled "Oceans and the law of the sea". Some other delegations did not share this view. Nevertheless, it was noted that, in resolution 54/33, the General Assembly, in establishing the Consultative Process, had recalled that the United Nations Convention on the Law of the Sea sets out the legal framework within which all activities in the oceans and seas must be carried out and with which those activities should be consistent, as recognized also by the United Nations Conference on Environment and Development in chapter 17 of Agenda 21, and had also acknowledged the importance of maintaining the integrity of UNCLOS (see also A/56/121, letter from the Co-Chairpersons, fifth paragraph; and ibid., part B, para. 7).

139. There was an in-depth discussion on the two areas of focus selected for the second meeting of the Consultative Process, identified by the General Assembly in resolution 55/7: (a) marine science and the development and transfer of marine technology as mutually agreed, including capacity-building in that regard; and (b) coordination and cooperation in combating piracy and armed robbery at sea.

140. In the area of international cooperation and coordination, there was an exchange of views with the Chairman of the Subcommittee on Oceans and Coastal Areas (SOCA) of the Administrative Committee on Coordination. It was pointed out that SOCA was in a period of transition and was undergoing a period of reviewing its mechanism. However, it was stressed that, while the structure for coordination might undergo changes, the function and goal of coordination in ocean affairs would remain and would be carried out (see also para. 128 above).

141. *Trust funds*. Pursuant to paragraph 45 of General Assembly resolution 55/7, the Secretary-General established a trust fund for the purposes of assisting developing countries, in particular the least developed countries, small island developing States and landlocked developing States, in attending the meetings of the Consultative Process. Japan transferred to the fund the undisbursed portion ($17,130) of its contribution to the Voluntary Fund for Supporting Developing Countries Participating in the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which is now closed. Representatives from three developing countries were provided with travel expenses from the trust fund to attend the second meeting of the Consultative Process in May 2001.

142. By a letter dated 22 June 2001 addressed to the President of the General Assembly (A/56/121), the Co-Chairpersons submitted the report on the work of the second meeting of the Consultative Process, proposing a number of issues and elements for consideration by the General Assembly under the agenda item "Oceans and the law of the sea" and for potential inclusion in the relevant General Assembly resolutions, in

accordance with paragraph 3 (h) of resolution 54/33. The report was composed of three parts: (a) issues to be suggested, and elements to be proposed to the General Assembly; (b) Co-Chairperson's summary of discussions; and (c) issues for consideration for possible inclusion in the agenda of future meetings.

Notes

[1] Full texts of the declarations have been circulated through Depositary Notifications, and are available at the web site of the Division for Ocean Affairs and the Law of the Sea of the United Nations Office of Legal Affairs (www.un.org/Depts/los) as well as that of the Treaty Section of the United Nations Office of Legal Affairs (www.un.org/Depts/Treaty).

[2] MSC 74/24, annex 4, resolution MSC.119(74).

[3] The report of the Commission is available on its web site at www.icons.org.au.

[4] LEG 83/4/1.

[5] See NAV 47/13, paras. 3.63-3.66.

[6] See IMO document MEPC 46/INF.35.

[7] See NAV 47/13, paras. 12.28-12.33 and annexes 18 and 19.

[8] See MSC 74/24, paras. 2.29 and 2.31.

[9] For the text of the draft resolutions, see MSC 74/24, annexes 11 to 13.

[10] See General Assembly resolution 55/255.

[11] The report of the evaluation and assessment missions conducted in Jakarta and Singapore is contained in IMO document MSC 74/17/1.

[12] See MSC 74/24, sect. 17 and annexes 14 and 18.

[13] First biannual report on the trafficking or transport of illegal migrants by sea issued by the IMO secretariat on the basis of incidents reported to the organization. IMO Circular MSC.3/Circ.1, available on the web site of IMO at www.imo.org/HOME.html.

[14] See MSC 74/23/4.

[15] MSC 74/23/8.

[16] See *Official Records of the Economic and Social Council, 2001, Supplement No. 8* (E/2001/28-E/CN.7/2001/12), available on the web site of UNDCP at www.undcp.org/cnd_documents.html.

[17] IWC press release 2001, Final Press Release, http://ourworld.compuserve.com/homepages/iwcoffice/pressrelease2001.htm.

[18] Ibid.

[19] Excerpted from documents and press releases of the International Seabed Authority and information contained in its web site at www.isa.org.jm.

[20] Excerpted from UNEP/GPA Coordination Office documents.

[21] IMO document LC/SG 24/11, annexes 3-10.

[22] Ibid., para. 2.15.

[23] Ibid., paras. 9.10-9.11.

[24] The Condition Assessment Scheme was adopted on 27 April 2001 by resolution MEPC.94(46).

[25] For the text of the Convention, see IMO document LEG/CONF.12/19.

[26] For the discussions at the forty-sixth session of MEPC and the text of the draft convention to be submitted to the conference, see MEPC 46/23, sect. 5 and annex 5.

[27] The report of the third meeting is contained in document UNEP(DEC)/NEP/EM.3/4. In order to facilitate the negotiating process, UNEP and the Division closely cooperated with respect to certain issues related to maritime jurisdiction. That cooperation was a good example of ensuring consistent approaches with a view to implementing UNCLOS, as called for by the General Assembly in resolution 55/7, para. 23.

[28] The programme of work is contained in decision IV/5 adopted by the Conference of Parties to the Convention on Biological Diversity. For the text see the web site of the secretariat of the Convention on Biological Diversity at www.biodiv.org.

[29] The terms of reference are contained in SBSTTA recommendation V/14, annex II, available on the web site of the secretariat of the Convention on Biological Diversity at www.biodiv.org.

[30] The proceedings of the workshop are available on the web site of the German Federal Agency for Nature Conservation at www.bfn.de/06/060301_workshoptp.htm.

[31] See A/56/121, part B, para. 84.

[32] For draft text of the guidelines, see IMO document MEPC 46/23, annex 6.

[33] See IMO document NAV 47/13, annex 4.

[34] The Kyoto Protocol will enter into force after it has been ratified by at least 55 parties to the United Nations Framework Convention on Climate Change, including industrial countries accounting for 55 per cent of the total 1990 carbon dioxide emissions from the whole group of industrialized countries. As of the date of the

present report, 37 countries have ratified, including one industrial country.

[35] Excerpted from United Nations press releases and United Nations Department of Economic and Social Affairs documents.

[36] See *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 19* (A/56/19).

[37] Information provided by SOPAC.